THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 24282 of 2006

DATE: 07-06-2007

Between :

Putta Venkata Krishna Reddy and another.

… Petitioners

And

The State Bank of Hyderabad,
Regional Office,
Rep., by its Regional Manager,
Vijayawada and antoher.

… Respondents

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ORDER:

The first petitioner had availed cash credit facility from the second respondent-Bank by mortgaging the stock in trade. The second petitioner stood as guarantor to the facilities availed by the first petitioner. It is not in dispute that the first petitioner committed default in repayment of the loan amount and consequently the respondents having invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') issued a notice under Section 13(2) of the Act calling upon the petitioners to repay a sum of Rs.7,73,746/- due as on 30-06-2003. Since the amounts due were not paid, possession notice under Section 13(4) of the Act was issued on 14-11-2003. At that stage, the petitioner filed W.P.No.1224 of 2004 challenging the validity of the provisions of the Act. The said writ petition was dismissed by a Division Bench of this Court on 21-06-2004 following the judgment of the Supreme Court in ***Mardia Chemicals Limited v. Union of India***[1] upholding the constitutional validity of provisions of the Act except Section 17(2), and granting liberty to the petitioners to work out the remedies under the Act. However, the petitioners did not avail the remedies and consequently the respondents issued an auction notice dated 07-10-2006 for sale of the mortgaged property. While the sale was proposed to be held on 24-11-2006, this writ petition was filed on 20-11-2006 contending *inter alia* that since the request of the petitioner for one time settlement is pending the respondents are not justified in proposing to auction the mortgaged properties. It is also alleged that

the respondents failed to furnish a copy of the account furnishing the details of the amounts outstanding. According to the petitioners the amount due under the loan account is only Rs.4,17,419/- which they are ready and willing to pay.

This Court, while directing notice before admission, by order dated 22-11-2006, granted stay of the sale proposed under the impugned auction notice dated 07-10-2006 subject to the condition that the petitioner deposits a sum of Rs.4,17,420/- on or before 24-11-2006.

In the counter affidavit filed on behalf of the Bank, it is stated that the petitioner failed to comply with the order of this Court and the amounts as directed were not deposited. It is also stated that as on the date of the sale notice, a sum of Rs.8,32,417/- is due with future interest at the rate of
7.17 %.

An affidavit in reply has been filed by the petitioner stating that though the amount could not be deposited within the time granted by this Court, subsequently, a sum of Rs.4,17,500/- was deposited on 05-12-2006 which was accepted and acknowledged by the respondents.

I have heard the learned counsel for both the parties.

It is to be noted that admittedly the demand notice issued under Section 13(2) and the possession notice under Section 13(4) of the Act have become final. Though this Court by order dated
21-06-2004 in WP.No.1224 of 2004 granted liberty to the petitioner to work out the remedy of appeal within the time specified thereunder, the petitioner failed to do so. The plea of the petitioners that their proposal for one time settlement is under consideration has been denied by the respondents. Even assuming that there is a dispute as to the amounts shown as outstanding under the loan account, it is for the petitioners to work out the appropriate remedy as available under law, but on that ground they cannot seek a writ of Mandamus restraining the respondents from proceeding against the secured assets under the provisions of the Act.

Accordingly, the writ petition is dismissed. However, it is left open to the petitioners to work out the appropriate remedy for redressal of their grievance if any. No costs.

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G. ROHINI, J.

Date:07-06-2007
KLP

[1] (2004) 3 SCC 311